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EXAMINER

KUHNS, SARAH LOUISE

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1761

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/840,214

Applicant(s)

VAN DEN NIEUWELAAR ET AL.

Examiner

Sarah L. Kuhns

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 2-4, 7, 13, and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zwanikken et al., U.S. Patent 5,595,066.

In regard to claim 2, Zwanikken discloses a method of preserving slaughtered birds or parts thereof provided with skin comprising, conveying product carriers through at least a portion of a chilling room (14) wherein each product carrier carries a single slaughtered bird or part thereof and wherein at least some of the slaughtered birds or parts thereof are conveyed through at least a portion of the chilling room (14) in different planes (15); chilling each slaughtered bird or part thereof by exposing the slaughtered bird or part thereof to a stream of chilling air in the chilling room; and moistening at least a portion of each slaughtered bird or part thereof by atomization of water, wherein the moistening of each slaughtered bird or part thereof, the water film covering substantially the entirety of the skin of the slaughtered bird or part thereof, the water film covering substantially the entirety of the skin of the slaughtered bird or part thereof and being maintained on the skin during chilling (column 3, lines 28-37). It was well established to optimize space by using parallel conveyor paths and it is not seen how organizing such

paths in a vertical direction, as claimed, as opposed to a horizontal direction, as demonstrated by Zwanikken, constitutes novelty.

In regard to claim 3, Zwanikken discloses the slaughter birds being conveyed hanging by both legs during moistening (column 3, lines 56-57).

In regard to claim 4, Zwanikken discloses the birds being hung by their legs and sprayed from above. Therefore, it would have been expected that some of the water sprayed would enter the abdominal cavity.

In regard to claim 7, Zwanikken discloses moistening the slaughtered bird periodically (column 4, lines 5-7).

In regard to claim 13, Zwanikken discloses spraying the slaughtered birds or parts thereof prior to chilling (column 4, lines 1-7).

In regard to claim 16, Zwanikken discloses a device comprising a chilling room comprising means for generating a stream of chilling air (11); a conveyor for conveying product carriers in a conveyance direction and along a conveyor path (9) that extends at least partially through the chilling room, wherein each carrier is adapted to carry a single slaughtered bird or part thereof and wherein the conveyor is adapted to convey at least some of the carriers through the chilling room in different horizontal planes; and a spray means (10) for moistening the skin of a slaughtered bird or part thereof and to maintain the water film on the slaughtered bird or part thereof during exposure to the chilling air (column 3, lines 28-37).

In regard to claim 17, Zwanikken discloses the spray means (10) being positioned at a spray station located outside the chilling room (figure 1).

In regard to claims 18 and 19, Zwanikken discloses that the poultry may be sprayed at various places with water (column 4, lines 6-7). As such, it would have been obvious to include spray means within the chilling room, at locations such as those claimed, in order to ensure efficient heat extraction from the slaughtered bird.

Claims 8, 9, 11, 12, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zwanikken et al., as applied above, in view of Masuda et al., U.S. Patent 4,199,958.

In regard to claims 8 and 11, Zwanikken discloses moistening the slaughtered bird periodically (column 4, lines 5-7), but does not disclose the exact timing. Masuda also discloses a method of preserving slaughtered birds or parts thereof provided with skin comprising, conveying product carriers (82) through at least a portion of a chilling room (3) wherein each product carrier carries three slaughtered birds or parts thereof and wherein at least some of the slaughtered birds or parts thereof are conveyed through at least a portion of the chilling room in different planes (81); chilling each slaughtered bird or part thereof by exposing the slaughtered bird or part thereof to a stream of chilling air in the chilling room; and moistening at least a portion of each slaughtered bird or part thereof by atomization of water, wherein the moistening of each slaughtered bird or part thereof, the water film covering substantially the entirety of the skin of the slaughtered bird or part thereof, the water film covering substantially the entirety of the skin of the slaughtered bird or part thereof and being maintained on the skin during chilling (abstract). Masuda further discloses the use of 15 cc of water (approximately 15 grams) to moisten each slaughtered bird or part thereof (column 4,

lines 11-14) and the moistening occurring at least every 10 minutes (column 4, lines 3-6). It therefore would be expected that similar water amounts and timing for the periodic moistening of the poultry would also be effective in the process of Zwanikken since both processes are directed to the same purpose of preserving poultry.

In regard to claim 9, Zwanikken does not disclose moistening the bird less frequently, the further it is conveyed. However, it would be obvious to do so because the further the bird is conveyed, the more the temperature of the bird drops. This reduces the need for moistening and therefore spraying the bird less frequently would prevent useless consumption of water.

In regard to claim 12, Zwanikken does not state a step of assessing the color of the skin. However, Masuda discloses assessing the color of the skin of each slaughtered bird or part thereof (column 8, lines 46-50). Therefore, it would have been obvious to include the conventional step of assessing the color of the skin of the poultry in order to better ensure the quality of the products.

In regard to claims 14 and 15, Zwanikken does not disclose the temperature of the chilling air, but does disclose the core temperature of the poultry being less than 6°C (column 3, lines 2-3) and therefore, it would have been expected the temperature of the cooling air was cooler than 6°C and likely within the claim limitations. Additionally, Masuda discloses chilling the carcasses to 5°C using a chilling air temperature of between 5° and -3°C (column 4, lines 15-18). It would have been obvious to extend this teaching to Zwanikken since such temperatures were effective in reaching the desired core temperature of the poultry without being low enough to freeze the carcasses.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zwanikken in view of Gutzman et al., U.S. Patent 6,103,286. Zwanikken does not disclose the use of an antibacterial agent. Gutzman teaches that lactic acid is widely used with poultry carcasses as a decontaminating agent (column 1, lines 34-36). Therefore, it would have been obvious to use lactic acid as an antibacterial agent in the method of Zwanikken because, as Gutzman teaches, lactic acid has a mild acid taste (column 1, lines 32-34) and is effective in reducing the amount of microorganisms on carcasses when used prior to chilling (column 1, lines 39-42).

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zwanikken in view of Dew, U.S. Patent 4,196,221. Zwanikken does not disclose the water being electrostatically charged. Dew teaches a method that is especially suitable for chilling of poultry that includes spraying water in an electric field (column 3, lines 47-66). It therefore would have been obvious to use electrostatically charged water in the method of Zwanikken in order to reduce the amount of water required for the process while at the same time providing for thorough washing of the animal, as taught by Dew (column 2, lines 34-44).

Response to Arguments

Applicant's arguments, filed August 22, 2005, in regard to the rejections based on 35 USC 102 are moot in view of the new grounds of rejection. The Examiner would like to note that the Applicant argued that Zwanikken did not teach product carriers carrying only one slaughtered bird or part thereof, but this is contradicted by the reference at

column 3, lines 29-37. Also, Applicant argued that Zwanikken does not teach that the spray means is positioned in a spray area separated from the stream of chilling air. However, the claim language requires that "the moistening of each slaughtered bird or part thereof occurs when the slaughtered bird or part hereof is not exposed to the stream of chilling air." At column 4, lines 2-5, Zwanikken states that the poultry is "taken to a station where it is sprayed with cold water...Cold air is *then* blown in a meandering path against the poultry." Therefore, Zwanikken does satisfy this limitation.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK


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